

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
Case No. 1:17-CV-00256

SHIRLEY TETER,

Plaintiff,

v.

PROJECT VERITAS ACTION FUND
et al.,

Defendants

**PLAINTIFF SHIRLEY TETER'S
MOTION TO SEAL**

Pursuant to Federal Rules of Civil Procedure 5.2(d) and 5.2(f), and Local Civil Rules 6.1(c), and the Consent Protective Order in this matter [D.E. 33], Plaintiff Shirley Teter, through her respective undersigned counsel, hereby moves for leave to file under seal certain materials submitted by Plaintiff in opposition to Defendants' motion for summary judgment.

In support of this motion, Plaintiff shows the Court the following:

1. Defendants moved for summary judgment, arguing, in part, that

Plaintiff had not demonstrated damages to support her claims. In opposition to Defendants' filing, Plaintiff is submitting excerpts from her personal, medical records.

2. At the outset of discovery, the parties recognized that certain materials may be confidential and require special treatment in filings with the Court. In recognition of the foregoing circumstances, the parties entered into, and this Court approved, a Consent Protective Order to facilitate the exchange of discovery in the case. [D.E. 33]. That Consent Protective Order contemplates that information designated as “confidential” under its terms, as well as any information containing or derived from such confidential information, may be filed under seal. [D.E. 33 at 11]. Medical records were specifically contemplated by the parties as potential sources of confidential material. [See D.E. 33 at 2]

3. By this motion, Ms. Teter respectfully seeks leave to file under seal three pages of medical records labeled TETER01688, TETER1689, and TETER1692 (the “Proposed Sealed Records”), and attached to Ms. Teter’s summary judgment response as Exhibits 36, 37, and 38:

- **A non-confidential description of the materials sought to be sealed:** The Proposed Sealed Records are Ms. Teter’s medical records for three separate visits with a medical professional;
- **A statement indicating why sealing is necessary and there are no alternatives to filing under seal:** Ms. Teter’s medical records contain her personal, protected health information and the parties have agreed that such records are appropriate for sealing;
- **The timing of the sealing:** Because these are Ms. Teter’s personal, protected health information, Ms. Teter requests that the sealing be permanent;
- **Supporting authority:** Ms. Teter’s medical records are protected by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), which protects individually-identifiable health information regarding the past, present, or future physical or mental

health or condition of an individual. *See* Public Law 104-19; 45 C.F.R. §160; 45 C.F.R. §164.

4. By this motion, Ms. Teter also respectfully seeks leave to file under seal the deposition transcript of Defendant James O'Keefe:

- **A non-confidential description of the materials sought to be sealed:** Mr. O'Keefe's entire deposition transcript;
- **A statement indicating why sealing is necessary and there are no alternatives to filing under seal:** Defendants' counsel designated the entire transcript as attorneys eyes only and subsequently de-designated portions of the transcript;
- **The timing of the sealing:** Plaintiff's counsel takes no position on whether the materials need to be sealed for an extended period of time;
- **Supporting authority:** Plaintiff's counsel defers to Defendants' counsel for authority on the necessity of sealing Mr. O'Keefe's transcript.

5. Undersigned counsel has consulted with counsel for Defendants regarding consent to this motion. Defendants' counsel consents.

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests that the Court grant her request for leave to file the materials described above under seal.

This the 22nd day of January, 2019.

Respectfully submitted,

ELLIS & WINTERS, LLC

By: /s Jonathan D. Sasser

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Counsel for Plaintiff Shirley Teter

CERTIFICATE OF SERVICE

I do certify that on the 22nd day of January, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record or interested parties via the CM/ECF system.

By: /s Jonathan D. Sasser
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